



TEXAS BOARD OF PROFESSIONAL ENGINEERS

1917 IH-35 SOUTH AUSTIN, TEXAS 78741 • (512) 440-7 723 • FAX (512) 442-1414
E-mail: peboard@tbpe.state.tx.us • Website: www.tbpe.state.tx.us

RQ-0244-GA

2003 - 2004
BOARD MEMBERS

JAMES R. NICHOLS, P.E.
CHAIR
FORT WORTH

GOVIND NADKARNI, P.E.
VICE-CHAIR
CORPUS CHRISTI

VICKI T. RAVENBURG, CPA
SECRETARY
SAN ANTONIO

C. ROLAND HADEN, Ph.D., P.E.
COLLEGE STATION

WILLIAM "BILL" LAWRENCE
HIGHLAND VILLAGE

SHANNON K. McCLENDON
DRIPPING SPRINGS

GERRY E. PATE, P.E.
HOUSTON

ROBERT M. SWEAZY, Ph.D., P.E.
LUBBOCK

JOSE F. CARDENAS, P.E.
EL PASO

June 28, 2004

The Honorable Greg Abbott
Attorney General of the State of Texas
Office of the Attorney General
P. O. Box 12548, Capital Station
Austin, TX 78711-2548

RECEIVED
JUN 29 2004
OPINION COMMITTEE

Attention: Opinion Committee

FILE # ML-43788-04
I.D. # 43788

Dear General Abbott:

RE: Request for an Opinion

The Texas Board of Professional Engineers (Board) requests your opinion as to whether the requirements that engineering documents be sealed by Texas licensed engineers only pertains to engineering projects designed and constructed in the State of Texas.

THE LAW

The Texas Engineering Practice Act (Act) Chapter 1001 of the Occupations Code, copy enclosed, grants the Board the authority to license engineers and regulate the practice of engineering in Texas.

SUMMARY OF ISSUE

Title 6, Chapter 1001 of the Texas Engineering Practice Act (Act) of the Occupations Code, grants the Texas Board of Professional Engineers the authority to license engineers and regulate the practice of engineering in Texas.

Under Section 1001.401. Use of Seal, provides in part:

- (a) On receiving a license, a license holder shall obtain a seal in a design authorized by the board, showing the license holder's name and the legend "Licensed Professional Engineer" or "Registered Professional Engineer."
- (b) A plan, specification, plat, or report issued by a license holder must include the license holder's seal placed on the document.

DISCUSSION

The Board's position in this situation is that Section 1001.401(b) only pertains to the sealing of documents for projects designed and constructed in Texas. If a project is to be constructed in another state or country, the license holder is required to be licensed in that state or country and affix a seal of the state or country having jurisdiction over the project.

The Honorable Greg Abbott

Page 2

June 28, 2004

The Board has taken disciplinary action against Texas license holders for the illegal practice of engineering in another jurisdiction as set forth in our Board Rule 137.65, which provides that an "engineer shall not practice or offer to practice engineering in any other jurisdiction in violation of the laws regulating the practice of professional engineering in that jurisdiction. A finding by such jurisdiction of illegal practice or offer to practice is misconduct and will subject the engineer to disciplinary action in Texas."

A license holder in Texas has complained to the Board that if a project is being designed in Texas for construction in another state, country or international waters, that the Texas license holder is required to affix a Texas seal to the design plans for the project. In this case, an international client requested a Texas firm to design an offshore oil platform, to be fabricated in Norway and then towed to and erected in international waters. It is our opinion that a Texas seal was not required on the project because the project was not constructed in Texas and the public of Texas was not affected. We believe that the Texas seal should only be placed on Texas projects and if projects are to be constructed in other jurisdictions, a license should be obtained in that jurisdiction.

Please advise the Board if it is correct in its opinion that Texas licensed professional engineers should only affix the Texas engineer seal to engineering plans, specifications and other documents that are to be constructed or erected in Texas?

Thank you in advance for your assistance in this matter. If you have any questions, please feel free to contact Mr. Paul D. Cook, Assistant Executive Director, at 440-3079.

Sincerely,

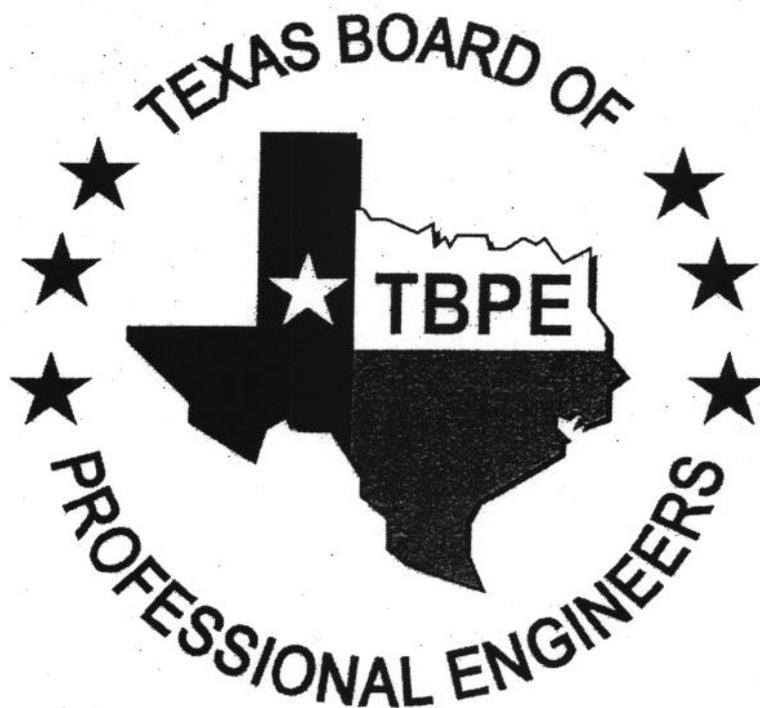


Victoria J.L. Hsu, P.E.
Executive Director

Enclosures: As stated

THE STATE OF TEXAS

**TEXAS ENGINEERING PRACTICE ACT
AND RULES CONCERNING
THE PRACTICE OF ENGINEERING
AND
PROFESSIONAL ENGINEERING LICENSURE**



TEXAS BOARD OF PROFESSIONAL ENGINEERS
1917 IH 35 SOUTH
AUSTIN, TX 78741-3702
Email: peboard@tbpe.state.tx.us
Website: <http://www.tbpe.state.tx.us>

Rules effective May 21, 2004

(b) The Board by rule may adopt a schedule under which licenses and registrations expire or renew on various dates during the year. For the year in which the license or registration expiration date is changed, the Board shall prorate license or registration fees on a monthly basis so that each license or registration holder pays only that portion of the license or registration fee that is allocable to the number of months during which the license or registration is valid. On renewal of the license or registration on the new expiration date, the total license or registration renewal fee is payable.

Added by Acts 2001, 77th Leg., ch. 1421, § 1, eff. June 1, 2003. Amended 78th Leg, SB 277, eff. September 1, 2003.

§ 1001.352. Notice of License Expiration

Not later than the 30th day before the date a person's license is scheduled to expire, the Board shall send written notice of the impending expiration to the person at the person's last known address according to the records of the Board.

Added by Acts 2001, 77th Leg., ch. 1421, § 1, eff. June 1, 2003. Amended 78th Leg, SB 277, eff. September 1, 2003.

§ 1001.353. Procedure for Renewal

(a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the Board before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b) A person whose license has been expired for 90 days or less may renew the license by paying to the Board a renewal fee that is equal to 1-1/2 times the normally required renewal fee and any applicable increase in fees as required by Section 1001.206.

(c) A person whose license has been expired for more than 90 days but less than two years may renew the license by paying to the Board a renewal fee that is equal to two times the normally required renewal fee and any applicable increase in fees as required by Section 1001.206 for each delinquent year or part of a year.

(d) A person whose license has been expired for two years or more may not renew the license. The person may obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

Added by Acts 2001, 77th Leg., ch. 1421, § 1, eff. June 1, 2003. Amended 78th Leg, SB 277, eff. September 1, 2003.

§ 1001.354. Renewal of Expired License by Out-of-State Practitioner

(a) A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination.

(b) The person must pay to the Board a fee that is equal to two times the normally required renewal fee for the license.

Added 78th Leg, SB277 eff. September 1, 2003.

§ 1001.355. Inactive Status

(a) An engineer may request inactive status at any time before the expiration date of the person's license. A license holder on inactive status may not practice engineering.

(b) A license holder on inactive status must pay an annual fee set by the Board.

(c) A license holder on inactive status is not required to:

- (1) comply with the continuing education requirements adopted by the Board; or
- (2) take an examination for reinstatement to active status.

(d) To return to active status, a license holder on inactive status must:

- (1) file with the Board a written notice requesting reinstatement to active status;
- (2) pay the fee for the annual renewal of the license and the fee increase required by Section 1001.206; and
- (3) provide evidence satisfactory to the Board that the person has complied with the continuing education requirements adopted by the Board.

Added 78th Leg, SB277 eff. September 1, 2003.

SUBCHAPTER I. PRACTICE OF ENGINEERING

§ 1001.401. Use of Seal

(a) On receiving a license, a license holder shall obtain a seal in a design authorized by the Board, showing the license holder's name and the legend "Licensed Professional Engineer" or "Registered Professional Engineer."

(b) A plan, specification, plat, or report issued by a license holder must include the license holder's seal placed on the document.

(c) A person may not place a seal on a document if the license of the license holder named on the seal has expired or has been suspended or revoked.

which, if done by the engineer would violate any provision of the Texas Engineering Practice Act, general Board rule, or any of the professional practice requirements of federal, state and local statutes, codes, regulations, rules or ordinances in the performance of engineering services; and

(3) exercise reasonable care to prevent the association of the engineer's name, professional identification, seal, firm or business name in connection with any venture or enterprise which the engineer knows, or should have known, is engaging in trade, business or professional practices of a fraudulent, deceitful, or dishonest nature, or any action which violates any provision of the Texas Engineering Practice Act or Board rules.

(4) act as faithful agent for their employers or clients;

(5) conduct engineering and related business affairs in a manner that is respectful of the client, involved parties, and employees. Inappropriate behaviors or patterns of inappropriate behaviors may include, but are not limited to, misrepresentation in billing; unprofessional correspondence or language; sale and/or performance of unnecessary work; or conduct that harasses or intimidates another party.

(c) The engineer shall not:

(1) aid or abet, directly or indirectly, any unlicensed person or business entity in the unlawful practice of engineering;

(2) maliciously injure or attempt to injure or damage the personal or professional reputation of another by any means. This does not preclude an engineer from giving a frank but private appraisal of engineers or other persons or firms when requested by a client or prospective employer;

(3) retaliate against a person who provides reference material for an application for a license or who in good faith attempts to bring forward an allegation of wrongdoing;

(4) give, offer or promise to pay or deliver, directly or indirectly, any commission, gift, favor, gratuity, benefit, or reward as an inducement to secure any specific engineering work or assignment;

(5) accept compensation or benefits from more than one party for services pertaining to the same project or assignment;

(6) solicit professional employment in any false or misleading advertising;

§137.65 Action in Another Jurisdiction

(a) The engineer shall not practice or offer to practice engineering in any other jurisdiction in violation of the laws regulating the practice of professional engineering in that jurisdiction. A finding by such jurisdiction of illegal practice or offer to practice is misconduct and will subject the engineer to disciplinary action in Texas.

(b) Any disciplinary actions taken by another jurisdiction on a matter which would constitute a violation of the Texas Engineering Practice Act or Board rules shall be sufficient cause for disciplinary action by this Board. A certified copy of the Board Order or Final Action from another jurisdiction shall be sufficient evidence to take disciplinary action in this state.

Subchapter D: Firm, Sole Proprietorship and Governmental Entity Compliance

§137.71 Firm Names

Pursuant to §1001.405(e), a business entity that is not registered with the Board may not represent to the public by way of letters, signs, or symbols as a part of any sign, directory, listing, contract, document, pamphlet, stationery, advertisement, signature, or business name that it is engaged in the practice of engineering by using the terms:

(1) "engineer,"

(2) "engineering,"

(3) "engineering services,"

(4) "engineering company,"

(5) "engineering, inc.,"

(6) "professional engineers,"

(7) "licensed engineer,"

(8) "registered engineer,"

(9) "licensed professional engineer,"

(10) "registered professional engineer," or

(11) "engineered," or

(12) any abbreviation or variation of those terms listed in (1)-(11) above, or directly or indirectly use or cause to be used any of those terms in combination with other words.

§137.73 Firm Record Modifications

(a) Each registered firm shall notify the Board in writing not later than 30 days after of a change in the business entity's:

(1) physical or mailing address, electronic mail address, telephone or facsimile number or other contact information;

(2) officers or directors;

(3) employment status of the professional engineers of the firm; or

(4) operation including dissolution of the firm or that the firm no longer offers to provide or is not providing engineering services to the public in Texas.

(b) Notice shall include, as applicable, the:

(1) full legal trade or business name entity,

(2) the firm registration number,